

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the Office electronic filing system on July 31, 2009.

  
Janet Shibata

PATENT  
PD-201008A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:

Erin H. Sibley

Customer No. 020991

Serial No. 09/844,923

Group Art Unit: 2424

Filed: 04/26/2001

Examiner: Joseph G. Ustaris

For: DIGITAL OVER-THE-AIR COMMUNICATION SYSTEM FOR USE WITH  
DIGITAL TERRESTRIAL BROADCASTING SYSTEM

**REPLY BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated July 6, 2009, please enter the following  
remarks.

**REMARKS**

In the paragraph bridging pages 9 and 10, the Examiner states that Hendricks discloses allocating the bandwidth to carry different types of services and points to Fig. 3, reference numeral 216. The Board is directed to review col. 10, ll. 27-51. This paragraph describes the operation of the cable headend 208. The connection between the cable headend and the set top terminal 220 is by way of a cable. The circle 216 illustrates various types of signals that may be included within the cable. As described in col. 10, the cable headend prepares the program signals that are received by the cable headend 208 for transmission to each set top terminal. Allocation of different frequency ranges is described but the allocation is described for the connection between the cable headend and the set top boxes. Local programming and local advertisements are described as being combined into the signals. It is clear from the description that all of the different types of signals do not originate from the operation center 202. Rather, some of the signals are incorporated together at the cable headend. Although allocation of a signal carried by the cable is set forth, there is no teaching for providing a system with an excess bandwidth portion. Further, the Hendricks reference does not teach that an excess bandwidth portion is used for inserting digital over-the-air electronic content.

At the bottom of page 10, the Examiner presents a new statement regarding conditional access. The Examiner states, "One of ordinary skill in the art would recognize that the combination of Hendricks' and Eldering's feature of delivering content via excess bandwidth with Breslaur's feature of conditional access would yield a predictable result. That is, allowing conditional access features to content that is delivered via excess bandwidth." As mentioned above, neither of the Hendricks or Eldering references teaches providing content through excess bandwidth. Further, there is no teaching or suggestion in the Breslaur reference for teaching the

use of conditional access for over-the-air content that is communicated through an excess bandwidth portion. The conditional access software set forth in Breslaur allows the user to obtain content from a broadcast data provider such as a television or radio broadcaster but not from excess bandwidth. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to claim 1.

The last three sentences in the first paragraph of page 12 and the paragraph bridging pages 12 and 13 are identical and therefore will be argued together. The Examiner states, "Appellant argues that tuning is different than not receiving. However, tuning is the function that allows the terminal to receive data. Therefore, data that is not tuned is not received by the terminal." Claim 19 recites that receiving the electronic content packages through a user appliance comprises receiving the electronic content packages through a user appliance without receiving the digital television channel signal. Thus, claim 19 illustrates that the user device does not need to receive the digital television channel signal but rather only the portion having the digital electronic content. In response to the Examiner's arguments, at some point the tuning to different channels allows the user device to receive the different channel signals. In this case, the digital channel signal is not received and thus is not and cannot be tuned to by the user appliance. The above argument is applicable to both claims 18 and 19. Likewise, claims 20 and 21 are similar in that the user appliance disregards the digital television signal. The difference between claims 18 and 19 and claims 20 and 21 is the use of the word disregard rather than received. None of the references teaches disregarding a signal. Applicant respectfully submits that although at, as the Examiner's states, the Hendricks reference can tune to only one channel at a time, the channel may eventually be tuned to and is thus not disregarded. Appellant

therefore respectfully requests the Board to reverse the Examiner's decision with respect to claims 20 and 21 as well.

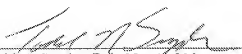
Appellants, therefore, respectfully request the Board to reverse the Examiner's position with respect to each and every claim of the present application in view of the above remarks and the Appeal Brief. Appellants thank the Board for their consideration. Should the Board have any questions regarding this matter, the Board is directed to contact the undersigned directly.

Please charge any fees required in the filing of this appeal to Deposit Account 50-0383.

Respectfully submitted,

Dated: July 31, 2009

By:

  
Todd N. Snyder, Reg. No. 41,320  
Attorney for Applicants

The DIRECTV Group, Inc.  
CA/LA1/A109  
2230 East Imperial Highway  
El Segundo, CA 90245  
Telephone: (310) 964-0560  
Facsimile: (310) 964-0941